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In re Application of OTSUKI et al :
U.S. Application No.: 10/567,968 :
PCT Application No.: PCT/JP2004/011853 :
Int. Filing Date: 10 August 2004 :
Priority Date Claimed: 12 August 2003 : DECISION
Attorney Docket No.: 060131 :
For: ANTIVIRAL AGENT AND FIBERS AND :
ANTIVIRAL MEMBERS USING THE :
SAME :

This is in response to applicant's "Statement Establishing the Proprietary Interest by Person Signing on Behalf of Non-Signing Inventor" filed 28 November 2006, which is being treated as a petition under 37 CFR 1.47(a).

BACKGROUND

On 10 August 2004, applicant filed international application PCT/JP2004/011853, which claimed priority of an earlier Japan application filed 12 August 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 17 February 2005. The thirty-month period for paying the basic national fee in the United States expired on 12 February 2006.

On 17 February 2005, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 30 August 2006, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 28 November 2006, applicant filed the present petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventors, (2) factual proof that the missing joint inventors refuse to join in the application or cannot be reached after diligent effort, (3) the fee set forth in §1.17(i), and (4) the last known addresses of the nonsigning joint inventors.

With regard to item (1) above, applicant has submitted a declaration signed by the available inventors each on his/her own behalf and on behalf of the nonsigning inventor.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, an affidavit or declaration of facts should be submitted which fully describes the exact facts which are relied on to establish that a diligent effort was made. . . . The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

The petition states that joint inventor Masami Yakura cannot be found. However, the petition does not sufficiently establish that a diligent effort was made to locate Yakura. Applicant should supply an affidavit signed by the person with firsthand knowledge of the various attempts to reach Yakura along with any supporting documentary evidence.

With regard to item (3) above, the requisite petition fee has not been provided.

With regard to item (4) above, the petition states the last known address of the nonsigning inventor.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.47(a) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Failure to timely file a proper response will result in abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)".

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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